IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ePLUS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:09CV620 (REP)
	)	
LAWSON SOFTWARE, INC.,	)	
	)	
	)	
Defendant.	)	

DEFENDANT LAWSON SOFTWARE, INC.'S MOTION TO EXPUNGE EPLUS'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FOR EXPEDITED BRIEFING AND MEMORANDUM IN SUPPORT

Defendant Lawson Software, Inc. ("Lawson"), by counsel, states as follows for its Motion to Expunge ePlus's Proposed Findings of Fact and Conclusions of Law in Support of Motion for Contempt for Violation of Permanent Injunction and for Expedited Briefing on Lawsons' Motion:

1. On January 24, 2013, the Court entered an Order [Dkt. No. 1002] setting forth a schedule for post-hearing briefing on ePlus's Motion to Show Cause Why Lawson Should Not be Held in Contempt [Dkt. No. 798]. In that Order, the Court stated that if the Court determines that post-hearing briefs are needed, the colorably different issue and the infringement issue shall be briefed in separate briefs not to exceed twenty-five pages. *See* Order at 3-4. On April 9, 2013, at the hearing on ePlus's Motion to Show Cause, the Court further instructed the parties to file a separate brief on the issue of remedies.

2. At approximately 8:00 p.m. on Friday, April 12, 2013, ePlus filed its opening briefs on the issues of colorable difference, infringement and remedies. In addition, ePlus filed

Proposed Findings of Fact and Conclusions of Law [Dkt. No. 1060] ("Proposed Findings and Conclusions"). ePlus's Proposed Findings and Conclusions is more than a hundred pages in length and goes far beyond the briefing permitted by the Court's January 24 Order.

3. ePlus asserts that its Proposed Findings and Conclusions is filed pursuant to Fed. R. Civ. P. 65, 35 U.S.C. § 283 and the Court's Order of March 11, 2011 [Dkt. No. 629]. *See* Proposed Findings and Conclusions at 1. Rule 65 and 35 U.S.C. § 283, however, address injunctions, not contempt proceedings, and neither mentions the filing of proposed findings of fact and conclusions of law. The Court's Order of March 11, 2011 governed the injunctive relief application in which an evidentiary hearing was held on March 25, 2011 (*see* Dkt. No. 629 at ¶ 1) and oral argument was held on April 4, 2011 (*id.* at ¶ 5). The March 11, 2011 order was entered months before ePlus's Motion to Show Cause was filed and has nothing to do with the pending ePlus application for an order of contempt.

4. ePlus's Proposed Findings and Conclusions are nothing more than an attempt to evade the briefing limitations in the Court's January 24 Order. Many of the purported findings of fact are not findings of fact at all, but are simply additional argument in support of ePlus's contempt claims. Accordingly, the Court should not consider Plaintiff's inappropriate submission, should order it expunged from the docket, and should require ePlus to re-file its briefs, striking the references to the Proposed Findings and Conclusions. The re-filed briefs should use only appropriate citations to the record and conform to the Court's page limitations.

5. If the Court determines to modify its scheduling order for the contempt proceedings [Dkt. No. 1002] to provide for the submission of proposed findings of fact and conclusions of law and to accept the ePlus filing, Lawson respectfully submits that the schedule requiring the submission of response briefs on the issues of colorable differences, infringement

and remedies by Friday, April 19 does not allow sufficient time for Lawson to effectively dispute ePlus's submission. If the ePlus filing is allowed under an amended order, Lawson requests that it be given until Friday, April 26, 2013 to file its Propsoed Findings of Fact and Conclusions of Law.

WHEREFORE, Lawson respectfully requests that its Motion be granted and that ePlus's Proposed Findings of Fact and Conclusions of Law filed April 12, 2013 be expunged from the docket and not considered by the Court. In the alternative, Lawson requests that it be given until Friday, April 26, 2013 to file its Proposed Findings of Fact and Conclusions of Law. Lawson also requests that the Court grant expedited briefing on this Motion and that ePlus be ordered to file its response no later than noon on April 16, 2013 and that the Court schedule a telephonic hearing on this motion as soon as practical.

LAWSON SOFTWARE, INC.

By: ____/s/_____

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CERTIFICATE OF SERVICE

I certify that on this 15th day of April, 2013, a true copy of the foregoing will be filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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